right of the prosecution to withhold documentary evidence before trial.

In the circumstances, although the respondents' applications were not properly made under section 51(i) of the Criminal Procedure Code and the order of the learned President must be set aside, I would exercise my power of revision and allow the first part of the order to remain on the ground that the respondents were entitled to further and better particulars of the charge to enable them to prepare their defence and give instructions to their counsel. Although I allow this appeal and set aside the order of the learned President, I order that photostat copies of the documents specifically referred to in the charge be supplied by the Public Prosecutor to the respondents.

Appeal allowed.

Solicitors: *Joseph & Son; Morris Edgar & Clough Thuraisingham.*

RE APPLICATION OF TAN OON & ORS. TAN OON & 20 ORS. v. PEMUNGUT HASIL TANAH, KUANTAN

[O.C.J. (George J.) July 29, 1982]

[Kuantan — Originating Motion No. 46 of 1981]

Land Acquisition – Delay in acquisition proceedings – Valuation – Adequacy of compensation owing to delay – Oppression on land owners – Objection filed by owners – Application for certiorari – Jurisdiction of court – Merit of application – Land Acquisition Act, 1960, ss. 4, 8, 10, 12-16, 37, 38(1)(5) & 68 – Federal Constitution, art. 13.

Administrative Law – Certiorari – Whether court has jurisdiction to grant order of certiorari in respect of compensation award made by Collector of Land Revenue.

Constitutional Law – Compulsory acquisition – Federal Constitution, art. 13.

The applicants were the registered owners of several parcels of land in the District of Kuantan. By *Gazette notification* dated May 11, 1972 the Government of the State of Pahang intended to acquire the said lands. The section 8 declaration was published in the *Gazette* dated February 13, 1975. The inquiry was commenced only on November 28, 1980 and was completed on January 17, 1981. The offer of compensation was made by the respondent on April 8, 1981. At the inquiry before the respondent, solicitors for the applicants submitted a valuation report on the said lands by a well-known firm of estate agents, surveyors and valuers who had valued the lands as at February 13, 1975 at $31,837,500.00 and as at November 28, 1980 at about $70,000,000.00. The respondent awarded and offered as compensation the amount of $10,801,553.10 based on his opinion of the market value of the said lands as at February 13, 1975. On May 5, 1981 within the prescribed time each applicant filed an objection under sections 37 and 38(1) of the Land Acquisition Act, 1960. The issue on hearing of the objections would have to be what the true market value of the land was as at February 13, 1975, and not November 28, 1980. Because of the delay, the applicants applied for an Order of *certiorari* to quash the decision and award of compensation made by the respondent. The basis of the application appeared to be that the whole process of acquisition had become a nullity and when he finally got down to conduct the section 10 inquiry the respondent had ceased to have jurisdiction to do so.

The State Legal Adviser on behalf of the respondent contended as a preliminary objection that the court had no jurisdiction to grant an order of *certiorari* in respect of an award of compensation made by a Collector of Land Revenue in a land acquisition proceeding.

Held: (1) the court has the jurisdiction to entertain the motion for *certiorari*, and the preliminary objection was dismissed with costs;

(2) the dilatory nature of the proceedings had acted so oppressively on the applicants as owners of the lands so as to make the compensation eventually awarded to them based on 1975 value to be no compensation at all;

(3) the delay of almost 6 years between the section 8 notification and the holding of the section 10 inquiry caused the section 8 notice to be exhausted and of no effect, for the valuation of the land made in 1981, based on the date of the section 8 notification (February 13, 1975) would not provide adequate compensation to the applicants;

(4) the awards of the respondent were called in and quashed, with costs to the applicants.

Cases referred to:

(1) *R.* v. *Legislative Committee of the Church Assembly* [1928] 1 K.B. 411, 415.
(2) *R.* v. *Electricity Commissioners* [1924] 1 K.B. 171, 204, 205.
(3) *Nakkuda Ali* v. *M.F. De S. Jayaratne* [1951] A.C. 66, 78.
(4) *Ridge* v. *Baldwin* [1964] A.C. 40.
(5) *Ketua Pengarah Kastam* v. *Ho Kwan Seng* [1977] 2 M.L.J. 152, 154.
(6) *State* v. *Kalicharan* A.I.R. 1965 Cal. 638.
(7) *Ezra* v. *Secretary of State for India* L.R. 32 I.A. 93.
(8) *Anisminic Ltd.* v. *Foreign Compensation Commission* [1969] 2 A.C. 147.
(9) *South East Asia Fire Bricks Sdn. Bhd.* v. *Non-Metallic Mineral Products Manufacturers Employees Union & Ors.* [1980] 2 M.L.J. 165.
(10) *Simpsons Motor Sales (London) Ltd.* v. *Hendon Corpn.* [1964] A.C. 1088, 1126.
(11) *Doongarsee & Sons* v. *State of Gujarat* A.I.R. 1971 Gujarat 46 at 54.
(12) *Venkatama* v. *C.I. Trust Board* A.I.R. 1972 Mysore 193, 199.
(13) *State of M.P.* v. *Vishnu Prasad* A.I.R. 1966 S.C. 1593.
(14) *Krishna Iyer* v. *State of Madras* [1967] Madras L.J. Rep. 422.
(15) *Kam Gin Paik & Ors.* v. *Pemungut Hasil Tanah Daerah Barat Daya, Pulau Pinang* [1983] 2 M.L.J. 59.

ORIGINATING MOTION.

Shah Balendran for the applicants.

Tengku Baharuddin Shah and *Lamin H.M. Yunus* (State Legal Adviser, Pahang) for the respondent.

Cur. Adv. Vult.

George J. : The applicants are the registered owners of several parcels of land in the District of Kuantan which make up what is known as Lian Hup Rubber Estate.

By a *Gazette Notification* dated May 11, 1972 the Government of the State of Pahang, pursuant to section 4 of the Land Acquisition Act 1960, declared its intention to acquire the said lands. The section 8 declaration was published in the Gazette dated February 13, 1975. The enquiry required to be conducted pursuant to section 10 was commenced only on November 28, 1980 and was completed on January 17, 1981 and the offer of compensation was made by the Collector on April 8, 1981.

The applicants were represented by their solicitors at the enquiry held by the Collector and had submitted for the consideration of the Collector a valuation report in respect of the said lands by a well-known firm of estate agents, surveyors and valuers who had valued the lands as at February 13, 1975 at $31,837,500/- and as at November 28, 1980 at about $70 million. The Collector was not particularly impressed by the valuation report in that the amount he awarded and offered as compensation was $10,801,553.10 based on his opinion of the market value of the said lands as at February 13, 1975.

On May 5, 1981 (*i.e.* within six weeks of the making of the award by the Collector) pursuant to section 37 and as prescribed by section 38(1) of the Land Acquisition Act, 1960, each of the applicants filed with the Collector an application that an objection (that the award made by the Collector was grossly inadequate) be referred to the High Court.

Now, the principles relating to the determination of compensation in respect of acquisition of land is laid out in the First Schedule to the Act and applying that Schedule, in the instant case the market value of the said lands has to be as at the date of publication in the *Gazette* of the declaration made under section 8 which is February 13, 1975.

The applicants and their legal advisers were obviously well aware that, when the objections filed pursuant to section 37 are heard on their being referred to the High Court, the issue would have to be what the true market value of the lands was as on February 13, 1975 and not as on November 28, 1980 (the date the Collector commenced to hold his enquiry) as desired by the applicants.

The solution to this frustrating situation, that lent favour to the applicants and their legal advisers was to seek and obtain (which they did) the leave of this Court "to apply for a Writ of *Certiorari* to remove into the High Court, for the purpose of its being quashed, the decision and award of compensation made by the Pemungut Hasil Tanah....." The basis of the application appears to be that the whole process of acquisition had become a nullity and when he finally got down to conduct the section 10 enquiry the Collector had ceased to have jurisdiction to do so.

The learned Legal Adviser for the State of Pahang, acting on behalf of the Respondent Collector, took the view that not only were there no merits in the application but it should be disposed of on a Preliminary Objection and accordingly took out a Summons-in-Chambers (enclosure (7) in the file) for that purpose, which I heard in Open Court.

Of the four grounds set out in support of the Preliminary Objection only one could in my opinion be entertained as a Preliminary Objection which is the contention that the Court has no jurisdiction to grant an Order of *Certiorari* in respect of an award of compensation made by a Collector in a land acquisition proceeding. The other three grounds were really grounds to be raised in opposition to the Application when it was made and accordingly I have not given any consideration to them as preliminary points.

In a carefully researched and well-presented submission Tengku Baharuddin Shah, the then State Legal Adviser, although he was taking the Preliminary Objection, in fact dealt comprehensively with the motion to be moved by Encik Shah Balendran of Counsel for the Applicants. Encik Shah Balendran in his reply to the Preliminary Objection in fact made submissions that tantamounted to moving the motion for an Order of *Certiorari.*

I reserved judgment on the Preliminary Objection but before giving my decision called upon Counsel for both sides to complete their arguments (if they had not done so) on the substantive motion itself before I gave my judgment on the Preliminary Objection so that if I ruled that the Preliminary Objection failed I could go on to give my judgment on the substantive motion.

I also had the benefit of the arguments of Counsel in another identical application being Originating Motion No. 21/81 where the relevant facts were substantially similar to the facts in this Originating Motion No. 46/81.

Having now heard everything that Counsel has to say, my judgment on the Preliminary Objection and on the motion for the Order of *Certiorari* is as follows:-

Jurisdiction

The contention on behalf of the Respondent Collector is that *Certiorari* will not lie against an award made by a Collector pursuant to section 14 of the Land Acquisition Act in that the making of such an award is designed to be and is a purely administrative action. In any event section 68 of the Act has the effect of ousting the Court's jurisdiction.

Tengku Baharuddin Shah contended that when the Collector holds his enquiry he is simply collecting facts to make on behalf of the acquiring authority, an offer of compensation to the owner of the land which he may accept or not accept and that such an offer is a purely administrative action and is not a judicial or quasi-judicial action. He submitted that the use of the word "award" in section 14 of the Act was unfortunate and that in fact the Collector does not make any award but only makes an offer. He referred me, *inter alia*, to the terms of Form H in the Second Schedule to the Act in support of that contention.

The tests as to whether the decision of a person or a body of persons is subject to the controlling jurisdiction of a superior court was said by Lord Hewart, C.J., in *Rex* v. *Legislative Committee of the Church Assembly*[1] to be as follows:-

"In order that a body may satisfy the required test it is not enough that it should have legal authority to determine questions affecting the rights of subjects; there must be super-added to that characteristic the further characteristic that the body has the duty to act judicially."

Atkins L.J. (as he then was) in *Rex* v. *Electricity Commissioners*[2] stated

"....the operation of the writs has extended to control the proceedings of bodies who do not claim to be, and would not be recognised as, courts of justice. Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs".

This statement of Atkin, L.J., was held out in the judgment of the Judicial Committee of the Privy Council in *Nakkuda Ali* v. *M.F. De S. Jayaratne*[3] as a precise statement of the principle.

However, the modern trend has been to extend the scope of *Certiorari* and impose it as a general remedy for the control of decisions by the Administration affecting the rights of the subject. The ratio for this apparent extension of application of the power of judicial review is that whenever there is power to determine questions affecting the rights of the subject there is the duty to act judicially.

Professor Jain* says that the turning point from a restrictive approach to a more liberal approach (which is the modern trend) was the case of *Ridge* v. *Baldwin*[4]. That case certainly made clear that the authority to determine a question affecting the rights of individuals and the duty to act judicially are not two separate requirements. The power and the duty go hand in hand. In *Ketua Pengarah Kastam* v. *Ho Kwan Seng*[5] the Federal Court has shown its preference for the modern liberal trend by expressing the view that where an individual is adversely affected by an administrative action the rule of natural justice has to be observed whether the action is "labelled, judicial, quasi-judicial or administrative."

Sections 12 to 16 of the Act make clear that the Collector in holding his enquiry is clothed with judicial powers and section 14(1) makes it mandatory for him to prepare a written award which shall be final and conclusive evidence of the value of the land in the opinion of the Collector (section 14(2)).

It is only after he has made his written award that the Collector is required by section 16 to offer the amount awarded by him to the owner of the land as compensation. In fact paragraph 1 of Form H provides for the Collector to state the amount

* *M.P. Jain*, Administrative Law of Malaysia and Singapore, 1980 Malayan Law Journal Pte. Ltd. Pg. 182.

awarded and by paragraph 2, it is that amount, that has to be offered as "full compensation".

At best it can be said that the implementation of section 16 of the Act may be a purely administrative action but to my mind there is no question but that the holding of the enquiry pursuant to section 12 and the making of the award pursuant to section 14 are quasi-judicial functions which could and do affect the individual.

My attention was drawn to the Indian case *State* v. *Kalicharan*[6] which held that the Collector making an award under section 11 of the (Indian) Land Acquisition Act was not acting as a tribunal or a judicial officer. Reading the judgment in that case, I had the distinct impression that the two judges P. Chattarjee and A.C. Gupta were moved to conclude as they did, not so much from a personal conviction but more because they found themselves bound by an earlier decision of the Indian Supreme Court as well as the advice of the Judicial Committee in *Ezra* v. *Secretary of State for India*[7]. Having referred to those decisions binding on him and his brother, Chattarjee J. said, "It is difficult therefore for us to say at the present stage that the Collector while making an award..... was a tribunal." It is to be noted that *Ezra* is a 1905 decision made long before the advancement of the liberal attitude which found the approbation of the House of Lords in *Ridge* v. *Baldwin* in 1963. Since then there have been a number of Indian decisions including one of the Indian Supreme Court to which I shall be referring to later in this judgment, that have adopted the more liberal attitude.

The learned Legal Adviser argued that it was consistent with his contention that the Collector is not discharging a judicial act when he holds his enquiry and makes the offer of compensation that the Act does not provide an appeal from the Collector but only allows an objection to be raised. I do not think that such a test has merits. In any event in my opinion, the provisions of section 37 of the Act in fact provide an avenue for the dissatisfied individual affected by the award of the Collector to indirectly appeal to the High Court.

Section 37(2) of the Act provides that where the total amount claimed in compensation does not exceed five hundred ringgit the written award of the Collector shall be final and no objection may be made in respect thereof. This sub-section brings home the need for the Collector to divest himself of his subjective role as a servant or agent of the government and play the role of an independent tribunal who has to arrive at an opinion in respect of the award he has to make in a judicial manner.

My attention was drawn to section 15 of the Act which empowers the Collector to negotiate a settlement as being inconsistent with the exercise of judicial power. I agree with that submission but hasten to add that it is only with the express consent of the interested party that the Collector may negotiate a settlement. In negotiating a settlement the Collector acts as an agent of the acquiring authority and is not required to make an award. But if section 15 is not invoked and the Collector in fact holds the enquiry and makes his award the role he plays is very different from that of a negotiator.

Now, the Act provides various conditions that have to be met before the enquiry is held. The land has to be marked out and a note made in the Register of Title. Public Notice in Form E must be given. The enquiry should not be held earlier than 21 days of the publication of the Form E notice. The Notice must be served on the occupier of the land and on any person having a registrable interest in the land. At the date appointed for enquiry the Act requires the Collector to make "full enquiry into the value" and into the respective interests of all persons.

What is the effect of an enquiry that is held where the Collector ignores some or all of the above requirements imposed by the Act? What is the effect of an enquiry that is held by a Collector who does not observe the principles of natural justice? And in this context, what is the effect of section 68 of the Act which reads, "No suit shall be brought to set aside an award or apportionment under this Act."

Dealing first of all with the effect of section 68, reference has to be made to the decision of the House of Lords in *Anisminic Ltd.* v. *Foreign Compensation Commission*[8] which was cited with approval by the Privy Council in *South East Asia Fire Bricks Sdn. Bhd.* v. *Non-Metallic Mineral Products Manufacturers Employees Union & Ors.*[9]. *Anisminic* shows that when words in a statute oust the power of the High Court to review decisions of an inferior tribunal by Certiorari they must be construed strictly and they will not have the effect of ousting the power if the inferior tribunal has acted without jurisdiction or if it has done or failed to do something in the course of the enquiry which is of such a nature that its decision

is a nullity. *South East Asia Fire Bricks* shows that even the wide scope of section 29(3)(a) of the Industrial Relations Act, 1967 has not the effect of completely ousting *Certiorari* and it follows that section 68 of the Land Acquisition Act cannot by any means be said to do so. In fact when section 68 is read with the proviso to section 11 it is seen that the Legislators have given tacit recognition of the prerogative jurisdiction of the Courts. The proviso is as follows:- "Provided that no omission or failure to serve such notice upon any person falling under paragraph (b) or (c) shall invalidate any enquiry held pursuant to the notice or any award made upon the conclusion of the enquiry if, by reason of damage or deterioration of the register document of title to such land, such person cannot be ascertained." It recognises that the enquiry held by the Collector is always subject to review as to its validity. And particularly because of the terms of section 68 such a review could only be carried out in the Court's prerogative jurisdiction.

As to the non-observance of the principles of natural justice it is sufficient to again quote from the judgment of Raja Azlan Shah F.J. (as he then was) in *Ketua Pengarah Kastam* v. *Ho Kwan Seng:*

"The principles of natural justice that no man may be judged in his own cause and that no man may be condemned unheard today play a very prominent role in administrative law, particularly since the House of Lords invigorated them by a strong decision in *Ridge* v. *Baldwin.* The second principle is the rule requiring a fair hearing. This is of central importance because it can be used to construe a whole code of administrative procedural rights. The principle has a long history. One of the most famous cases is *Bentley's case* in 1723, in which it was held that the University of Cambridge could not deprive that great but rebellious scholar of his degrees without hearing his excuses for his misconduct: see *R.* v. *University of Cambridge.* In *Cooper* v. *Wandsworth Board of Works* damages were awarded against a local authority which demolished a building erected without due notification, although they did only what the statute said that they might do in such circumstances. The essence of this and many other such cases is that drastic statutory powers cannot be intended to be exercised unfairly, and that fairness demands at least the opportunity of a hearing. The courts clung to this principle as the powers of government expanded, and applied it frequently in many fields such as housing law, compulsory purchase of land and dismissal from public offices."

In *Simpsons Motor Sales (London) Ltd.* v. *Hendon Corpn.*[10], Lord Evershed said, "I should, I hope, be the last to suggest that the proper application and, where necessary, extension of equitable principles in the present day and age, when so much human activity is governed and controlled by legislation, should be restricted and I have in mind the picturesque language once used by Harman L.J. when he said that he thought that equity was not presumed to be of an age past child-bearing." In *Simpsons,* delays occurred in effecting a compulsory purchase order and the House of Lords observed, *inter alia,* that the Court might in its equitable jurisdiction interfere with the enforcement by an acquiring authority of their legal rights where it could be shown that there had been on their part something in the nature of bad faith, some abuse of their power and/or some alteration in the owners' position which was unfair in the particular circumstances. To succeed under this head of equity it must be shown that the effect of the acquisition would in some real sense be against good conscience.

The Courts not only have the power but will readily use such power to quash administrative decisions which were arrived at without due observance of the requirements of the statute under which the decision was purported to have been arrived at or which was arrived at without due observance of the principles of natural justice if it can be shown that the effect of the decision is in some real sense against good conscience.

Accordingly, the bald submission that the Court has no jurisdiction to entertain the notice in Certiorari fails and the Preliminary Objection is dismissed with costs.

Merits

I now have to consider whether on the facts of the instant case the applicants are entitled to the orders sought in the substantive motion before me.

The complaint is that the delay between the section 4 notification (alternatively the section 8 notification) and the making of the award was so great (some 8 years and 6 years respectively) that this Court in exercising its powers of review should quash "the decision and award of compensation made by the Pemungut Hasil Tanah".

In considering a complaint such as this the Court has to keep in view on the one hand the public interest which compels the acquisition of land and on the other the interest of the persons who are being deprived of their lands without their consent.

The exercise of acquisition of land commences with the section 4 notification. At that stage the State Authority need not necessarily have a clear picture of the extent of the land that it needs to

acquire. The section 4 notification serves the purpose of making it possible for the servants and agents of the State Authority to enter into the lands to help complete the necessary investigations to enable the State Authority to decide whether in fact it wants to acquire the land and if so the exact position and extent of the lands that is needed. Once this decision is taken the section 8 notification is made which by sub-section 3 thereof is conclusive evidence that all the lands referred to in the notification are needed by the State Authority.

Now the First Schedule to the Act provides that the compensation to be awarded will be the market value of the lands as on the date of the section 4 notification unless the section 8 notification was made 12 months later than the section 4 notification in which case the market value is as on the date of the section 8 notification.

It is relevant to note *en passant* that it is specifically provided for, that any improvements made to the lands after those notifications shall not be taken into account in assessing market value and that section 32 of the Act provides for the payment of interest at 6% per annum on the compensation awarded from the date of taking into possession until the payment or deposit of the amount awarded and not from the date of one or the other of the notifications. The taking of possession is normally effected after the award is made.

In India the provisions of their Land Acquisition Act is not dissimilar to ours. But in that country the compensation to be paid is to be valued as at date of the notification of the equivalent to our section 4 notification (which happens to be section 4 of their Land Acquisition Act). The equivalent of our section 8 is their section 6 and a notification under section 6 is a necessary prelude to the holding of the enquiry for the award of compensation to be made. Complaints have been brought to the Indian Courts in respect of delay on the part of the Collector in issuing the section 6 notification. In *Doongarsee & Sons* v. *State of Gujarat*[11], a portion of the judgment reads,

"The question whether the Government is bound to make a declaration under section 6 without unreasonable delay after the issue of section 4 notification rests on a proper interpretation of sections 4, 5A and 6 in the context of the scheme of the Act. But this question is no longer open to doubt or debate at least so far as this Court is concerned. We have held in our judgment delivered on March 18, 1969 in Special Civil Appln. No. 729 of 1968 (Guj) that the declaration under section 6 in order to be valid must follow within a reasonable time after the issue of section 4 notification. It therefore remains to consider whether the time that elapsed between section 4 notification and the second section 6 notification could be regarded as reasonable on the facts and circumstances of the present case. The notification under section 4 was issued on May 20, 1961 and the second section 6 notification on June 6, 1966 and there was thus an interval of about five years between the two notifications. We do not think this interval of time could be regarded as reasonable. The first section 6 notification was issued on April 29, 1963 after holding the requisite inquiry and considering the report of the Collector under section 5A, sub-section (2). This notification was clearly valid – and indeed as pointed out above, this position was not disputed by the learned Advocate General on behalf of the State – and the Special Land Acquisition Officer actually proceeded to make an award dated December 21, 1963 determining the amount of compensation payable to the petitioners in respect of the acquisition of their lands under this notification but before the acquisition could be completed the Government, for some reason which it is difficult to divine, cancelled this notification on April 28, 1966. There was obviously no justification for cancelling the first section 6 notification and even if the Government wanted to cancel the first section 6 notification and substitute it by the second section 6 notification, there was no reason why the Government should have waited from April 29, 1963 up to June 6, 1966. The delay from the date of the award, namely, December 21, 1963, up to the date of cancellation, namely, April 28, 1966, was in any event totally inexplicable. The total period which elapsed between section 4 notification and the second section 6 notification was about five years and this can in no view of the matter be regarded as reasonable. Even tested by the yard-stick of reasonable time provided by the Legislature in the second proviso introduced in section 6 by the Land Acquisition (Amendment and Validation) Act, 1967, namely, three years, the period of about five years would be clearly unreasonable. The Government cannot be permitted to trifle with the property rights of the citizen. The second section 6 notification must therefore be held to be invalid on this ground also."

A Full Bench of the Mysore Court in *Venkatamma* v. *C.I. Trust Board*[12] referred with approval to that part of the judgment in *Doongarsee* reproduced heretofore viz:

"Before concluding we propose to refer to one other aspect of the matter. If we accept the contention of the Special Land Acquisiton Officer that the market value prevailing in 1945 should be taken as the basis, then the acquisition of the properties in these cases might itself become unconstitutional. It would not be just and reasonable to give compensation for a property acquired by a public authority, on the basis of its market value prevailing some fifteen or twenty years before the date of taking possesion. We may refer here to a decision of the High Court of Gujarat in *M/s Doongarsee and Sons* v. *State of Gujarat* in which it is observed that a declaration under section 6 of the Acquisition Act in order to be valid must follow within a reasonable time after the issue of section 4 notification. In that

case section 4 notification was issued on May 20, 1961 and section 6 notification was issued on June 6, 1966 and thus there was an interval of about five years between the two notifications. It was held that a five years interval of time was unreasonable. In the cases before us, as already stated the interval between the notification under section 16 and the notification under section 18 of the Act is nearly fifteen years."

The Indian Supreme Court in *State of M.P.* v. *Vishnu Prasad*[13], said,

"Two things must be borne in mind while construing sections 4, 5-A and 6. The first is that the Act provides for acquisition of land of persons without their consent and in such case the provisions of the statute must be strictly construed. Secondly, in interpreting these provisions the court must keep in view on the one hand the public interest which compels such acquisition and on the other the interest of the person who is being deprived of his land without his consent. It is open to the appropriate government to issue as many notifications as it deems fit under section 4(1) even with respect to the same locality followed by a proper notification under section 6 so that the power of the appropriate government to acquire land in any locality is not exhausted by the issue of one notification under section 4 (1) with respect to that locality. On the other hand as the compensation has to be determined with reference to the date of the notification under section 4(1) the person whose land is to be acquired may stand to lose if there is a great delay between the notification under section 4(1) and the notification under section 6 in case prices have risen in the meantime."

Vishnu Prasad was relied on by the Madras High Court in *Krishna Iyer* v. *State of Madras*[14] in which case there was a delay of nearly four years between the section 4 notification and the section 6 notification. Extracts from that judgment also bear repeating *viz:*

"Viewing the objections catalogued above to the acquisition proceedings, I am of the opinion that in regard to the first objection mentioned above, though the statute does not prescribe any time-limit for issuing the section 6(1) declaration after the publication of the section 4(1) notification or for passing an award at a subsequent stage, that circumstance does not deprive the aggrieved party of a remedy, where undue prolongation of the proceedings has operated in an oppressive manner on the owner of the land especially in circumstances where land values have increased by leaps and bounds in the intervening time..... Taking all the aforesaid circumstances into account, I am of the opinion that this is a case where the requirement of law as well as the requirement of paying adequate compensation can be adequately met only if the proceedings taken hitherto are quashed and a fresh notification issued under section 4(1) and proceedings taken in regard to the petitioner's land. Accordingly the petition is allowed and the impugned notification is quashed."

The learned Legal Adviser submitted that in many of the sections of the Act the time within which the Collector is required to perform particular steps in the acquisition process is specified *e.g.* section 12 where the Collector after holding his enquiry "shall as soon as possible thereafter assess the amount of compensation ....." and argued that the omission of words of similar effect in section 10 is significant.

The Land Acquisition Act has to be read together with Article 13 of the Federal Constitution which provides that no person may be deprived of property save in accordance with law and that no law may provide for the compulsory acquisition or use of property without adequate compensation. And the Act thus read makes obvious that the implementation of the various sections of the Act must be effected to the end, *inter alia*, that the subject who is deprived of his property is provided with adequate compensation. And if the delay between the section 4 or section 8 notification and the holding of the enquiry results in compensation awarded being in fact inadequate, one is led to the irresistible conclusion that such a delay is inconsistent with the scheme of the Act. Any other interpretation of the scheme of the Act would make the Act to be in contravention of Article 13 of the Constitution and as such invalid.

In my view in any event, the effect of our section 10(2) of the Act is to emphasise the need for an early hearing but with a proviso that the need for expediency should not be at the expense of giving a reasonable opportunity (a period of not less than 21 days) for all interested persons to have notice that the enquiry is to be held. Once the actions required to be taken by section 9 have been completed it seems to me that the draftsman of the Act could see no proper reason for any delay in holding the enquiry forthwith save that a reasonable opportunity be given for all interested persons to have notice of the holding of the enquiry.

Looking at the Land Acquisition Act as a whole including section 32 and Clause 1 of the First Schedule to that Act, I have no doubt in my mind that the intention of the Legislators was to provide that period (which could extend for over 12 months) between the section 4 notification and the section 8 notification, for the State Authority to make up its mind with some finality as to what and how much of the land was needed for acquisi-

tion but thereafter the Collector was expected to complete the process expeditiously as otherwise, particularly when land values were appreciating hysterically, considerable hardship could be imposed on the owners of the lands acquired.

In my judgment compensation will not necessarily be adequate if it is not assessed and paid within a reasonable time of the section 8 notification. That, a delay of over 12 months between the section 4 notification and the section 8 notification could cause hardship if the market price is to be as at the date of the section 4 notification is in fact recognised by the Act and hence the provision that the market price should be as on the date of the section 8 notification if more than 12 months had lapsed after the section 4 notification. The Act itself in effect suggests that a period more than 12 months would be unreasonable.

It cannot be denied that with the amount of money representing the market value in February 1975 the applicants cannot in April 1981 hope to purchase in substitution for the lands to be taken away from them, a fraction of the acreage they have been deprived of because of appreciation of land values.

I cannot but accept that in Malaysia, almost without exception, there has been significant appreciation of land values between 1975 and 1980. Although it has not been tested, there is some evidence before me that the market value of the lands which were the subject of the acquisition had more than doubled during those 6 years. I find as a fact the dilatory nature of the proceedings has acted so oppressively on the owners of the land so as to make the compensation eventually awarded to them based on 1975 values to be no compensation at all.

It was argued by learned Counsel for the Respondent that *Certiorari* being a discretionary remedy, in any event the applicants' conduct precludes them from having the order sought.

It was submitted that by the applicants resorting to the section 37 and section 38 procedures of having the quantum of the award referred to the High Court they have waived any rights they may have had to move the Court for Certiorari. It was also suggested that the applicants had acquiesced in the delay on the part of the Collector. *Mandamus* was available to them but they chose not to utilise that right and are now estopped from complaining about the delay.

It is a general principle of law that an excess of statutory power cannot be validated by acquiescence in or failure to object to the excess or by the operation of an estoppel. (See *Halsbury's* Laws of England 4th Ed. Vol. I para. 23). In any event I see no call for the applicants to move in *Mandamus* particularly as by section 35 of the Act the State Authority was entitled to withdraw from the acquisition.

As to the effect of the resort to the procedures laid out by sections 37 and 38, I respectfully follow the judgment of Raja Abdul Aziz Addruse sitting as a Judicial Commissioner in *Kam Gin Paik & Ors.* v. *Pemungut Hasil Tanah Daerah Barat Daya, Pulau Pinang*[15] where in dealing with an application for stay of proceedings seeking to quash the award of compensation in a land acquisition case until the section 38 proceedings were completed, he said at page 3 –

"For the purpose of determining whether or not the application to stay should be granted, it is necessary that I consider what powers the High Court has when hearing the reference made under section 38(5) of the Act, in particular, whether the High Court can, at the hearing of the reference, deal with the several issues raised in the present proceedings, bearing in mind that the Court ought not to refuse to grant an Order of Certiorari, unless it is clearly satisfied that there are other remedies available to the Applicants which are more appropriate. The law on this is referred to in *Baldwin Francis Ltd.* v. *Patents Appeal Tribunal* ([1959] A.C. 663, 695) where, Lord Denning, after stating the general rule that the issue of Certiorari is a matter of discretion for the High Court said –

'..... a subsidiary rule has been laid down to the effect that where the Applicant is a party grieved who has no other remedy, the Court will grant the Order of Certiorari ex debito justitiae: See *Reg.* v. *Surrey Justices* ((1870) L.R. 5 Q.B. 466); *Reg.* v. *Manchester Legal Aid Committee* ([1952] 2 Q.B. 413)'.

The power conferred on the High Court by section 38(5) of the Land Acquisition Act, 1960 does not, in my view, permit it to go into the issues raised in these proceedings, namely:-

(a) whether the Collector's award ought to be quashed by reason of failure on the part of the Collector to observe the rules of natural justice when conducting his enquiry; and

(b) the other issues raised by the Applicants in these proceedings which this Court will have to consider.

I am, therefore, of the view that the Applicants will not be able to obtain the remedy they seek by these proceedings, in the reference under section 38(5) of the Act. For that reason, the application of the Respondents to stay these proceedings should be dismissed, and I accordingly dismissed it.

In any event there was evidence that the Collector was informed that in spite of the section 37 procedures being adopted, the applicants intended to proceed in *Certiorari.*

In the Indian Supreme Court case, *State of M.P.* v. *Vishnu Prasad,* a section 4 notice was given on May 16, 1949. In 1956 a number of notifications equivalent to our section 8 notification were issued in respect of certain parcels of lands that were part of the lands under the section 4 notification. Those lands were duly acquired. Then in 1960 another notification equivalent to our section 8 notification was issued in respect of 486.17 acres which was part of the original section 4 notification. A petition was taken out challenging the validity of this notification, the petitioner successfully contending that that notice of 1960 was void as it was not preceded by a fresh section 4 notification.

Vishnu Prasad demonstrates how a section 4 notice can be exhausted and how a section 8 notification may be void.

In my judgment in the instant case the delay of almost 6 years between the section 8 notification and the holding of the section 10 enquiry caused the section 8 notice to be exhausted and of no effect, for the valuation of the land made in 1981, based on the date of the section 8 notification would not provide adequate compensation to the applicants. Accordingly, the awards of the Collector are hereby called in and quashed. I also order that the Applicants shall be entitled to the costs of and incidental to the application as taxed by the proper officer of this Court.

Application allowed.

Solicitors: *Balendran, Chong & Bodi.*

ACE KING PTE. LTD. v. CIRCUS AMERICANO LTD. & ORS.

[O.C.J. (Zakaria Yatim J.) October 17, 1983]

[Kuala Lumpur – Civil Suit No. C 2127 of 1983]

Practice and Procedure – Mareva Injunction – Requirements for grant of Mareva Injunction – Good arguable case – Risk of assets of defendant being dissipated – Plaintiffs resident in Singapore – Order to provide security in lieu of undertaking as to damages and security for costs – Intervention by third parties – Legitimate debts – Variation of order – R.H.C. 1980, O.11, O.18 r.19, O.23 & O.56 r.2(2).

Contract – Whether agreement has been reached between parties – Contract not signed – Whether there is a binding contract.

In this case the High Court on an *ex-parte* application by the plaintiffs, a private limited company incorporated in Singapore, had ordered a *Mareva* injunction restraining the defendants from removing from the jurisdiction of the court, pledging, giving them away by security or otherwise disposing or in any way dealing with any of the asset or assets in which they or any of them are beneficially interested in so far as they do not exceed the sum of $876,337.92. The second defendant applied (a) that the plaintiff's writ of summons and statement of claim be dismissed on the ground that it disclosed no reasonable cause of action against the said defendant; (b) that the order for the *Mareva* injunction be dismissed; (c) that the plaintiffs do provide suitable security for the due performance of the order of court in lieu of their undertaking to the court and (d) that the plaintiffs do provide security for costs. An application was also made by third parties for an order that the applicants be given leave to intervene in the proceedings and that the order for the *Mareva* injunction made against the second defendants be varied. The plaintiffs' claim was based on an agreement between the plaintiffs and the defendants. The terms of the agreement had been agreed upon but the contract between them had not been signed. The second defendant was a director of the first defendant company.

Held: (1) from the evidence the parties had concluded their negotiations and an agreement had been reached on the terms and conditions of the contract. The only thing that had not been done was the signing of the contract which had been prepared by the lawyer. In the circumstances a contract had been concluded between the plaintiffs and the defendants. The second defendant was a party to the contract in addition to the first defendant;

(2) there are two requirements to be satisfied before a *Mareva* injunction is granted by the court, first the plaintiff must show that he has a good arguable case, and secondly the plaintiff must produce evidence that the defendant had assets within the jurisdiction and that there is a risk of the assets being removed before the judgment is satisfied. As the plaintiffs have satisfied both these requirements, this is an appropriate case to grant a *Mareva* injunction;

(3) as the plaintiffs are resident in Singapore and have no assets within judisdiction this is a suitable case to require